IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No. 37 of 2000

Date of decision: 11.7.2007

Jagdish Lal **…Appellant.**

Versus

State of H.P. **…Respondent.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the appellant : Mr. Shrawan Dogra, Advocate.

For respondent : Mr. Ashok Chaudhary,Addl. A.G.

Surjit Singh, Judge(Oral)

Heard and gone through the record.

2. Appellant has been convicted by the trial Court (Sessions Court) of offences punishable under Sections 323 and 325 of the Indian penal Code for voluntarily causing hurt and grievous hurt to his wife PW-4 Santosh Kumari.

3. Appellant was sent up for trial for offences punishable under Sections 307, 323 and 325 of the Indian penal Code on the allegations that on 21.6.1995 around 8.30 a.m., he gave a push to his wife while she was climbing down some stairs as a result of which she fell and received some injuries and then the appellant pushed her again as a result of which she landed on the base of the stairs and sustained some more injuries and after that the appellant gave her beating by means of empty glucose

---

Whether reporters of the local papers may be allowed to see the judgment?

bottles. Many injuries were sustained by PW-4 Santosh Kumari. One of the injuries, i.e. on one of the fingers of a hand, was opined to be grievous because of fracture of one of the phalanxes of that finger. Trial Court though charged the appellant with all the aforesaid three offences, yet on the conclusion of the trial it gave the verdict that the appellant was guilty of offences punishable under Section 323 and 325 of the Indian penal Code.

4. Grievance of the appellant is that the evidence on record has not been appreciated in the right perspective. Contention of the learned counsel is that as a matter of fact, the injured was having illicit relations with PW-1 Kuldip Singh and that when all of a sudden the appellant went to the shop of the injured (his wife), he did not notice her in that shop and then knocked the door of adjoining shop of PW-1 Kuldip Singh and found that his wife was there in the room of said Kuldip Singh. It was also his plea that he had been suspecting from before that PW-4 Santosh Kumari was having illicit relations PW-1 Kuldip Singh. To prove this plea he examined one of his sons, namely DW-1 Tilak Raj, aged about 21 years. Learned counsel for the appellant submits that it was in the light of these facts that the evidence led by the prosecution was required to be examined.

5. I have gone through the entire evidence on record, including the site plan.

6. It is made out from the prosecution evidence itself that the incident had taken place not in the manner and at the site testified by PW-4 Santosh Kumari, but inside the shop and the room of PW-1 Kuldip Singh, which adjoins the shop of PW-4 Santosh Kumari. Prosecution examined a lady named Swarno Devi (PW-3), who testified that she saw the appellant giving beating to his wife inside the room of Kuldip Singh. Room of Kuldip Singh is behind his shop, per site plan Ext. PW-10/A. According to this site plan, stains of blood were noticed inside the room

and evidence of struggle was also there in the shop. The site plan and the testimony of Swarno Devi (PW-3) give a lie to the testimony of Santosh Kumari that she was pushed down when descending the stairs and then beaten up outside her own shop.

7. Presence of PW-4 Santosh Kumari in the room of Kuldip Singh (PW-1), particularly when Kuldip Singh was also there and the shutters of the shop were closed, was enough to cause grave provocation to the appellant. If it is so, the acts of the appellant would fall, not under Sections 323 and 325 of the Indian Penal Code, but under Sections 334 and 335 of the Indian penal Code.

8. As a result of the above stated position, the appeal is partly accepted. The conviction and sentence of the appellant under Sections 323 and 325 of the Indian Penal Code are set aside. Instead, he is convicted under Sections 334 and 335 of the Indian penal Code and sentenced to pay a fine of Rs.1,000/-; in default of payment of fine to undergo simple imprisonment for one month.

9. Appeal stands disposed of.

July 11, 2007 (BC) **(Surjit Singh)**
Judge